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T.R.A. DOCKET ROOM

August 16, 2005

Ron Jones, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: *In Re: BellSouth's Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting From Changes of Law*
Docket Number: 04-00381

Dear Chairman Jones:

Please accept for filing in the above-captioned proceeding the original and fourteen copies of the Rebuttal Testimony of Jerry Watts in behalf of ITC^DeltaCom Communications, Inc.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

Henry Walker/dc

By:

Henry Walker

HW/djc
Enclosure

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, to:

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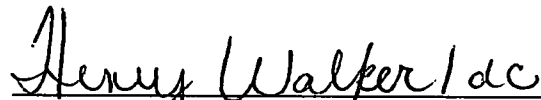
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Nashville, TN 37201

on this the 16th day of August, 2005.


Henry M. Walker

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

August 16, 2005

Re: Petition to Establish Generic Docket to)
Consider Amendments to Interconnection) Docket No. 04-00381
Agreements Resulting from Changes of Law)

**REBUTTAL TESTIMONY OF JERRY WATTS
IN BEHALF OF ITC^DELTACOM COMMUNICATIONS, INC.**

Q: PLEASE STATE YOUR NAME POSITION AND BUSINESS ADDRESS.

A: My name is Jerry Watts, I am Vice President of Government and Industry Affairs for ITC^DeltaCom, Communications, Inc. d/b/a ITC^DeltaCom ("DeltaCom"). My business address is 7037 Old Madison Pike Huntsville, Alabama, 35806.

Q: PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND BUSINESS EXPERIENCE.

A: I am a graduate of Auburn University with a B.S. in Accounting. I have over thirty years experience in the telecommunications industry including positions with Southern Bell, South Central Bell, BellSouth, AT&T, and ITC^DeltaCom. Most of my career has been in the area of Government Affairs with responsibility for both regulatory and legislative matters at the state and federal level.

I have served as an officer or board member for several industry associations including the Alabama Mississippi Telephone Association, The Georgia Telephone Association, The Alabama Inter-Exchange Carriers Association, The Southeastern Competitive Carriers Association and The Georgia Center for Advanced Telecommunications Technology. I currently serve as President of The Competitive Carriers of the South, ("CompSouth"), a non-profit association of 20 competitive telecommunications companies operating in the Southeast. I also serve as a board member of CompTel/ALTS. CompTel/ALTS is the leading industry association representing 350 competitive facilities-based telecommunications service providers, emerging VoIP providers, integrated

1 communications companies, and their supplier partners. CompTel/ALTS
2 members are building and deploying packet and IP-based networks to provide
3 competitive voice, data and video services in the U.S. and around the world. The
4 association, based in Washington, D.C., includes companies of all sizes and
5 profiles, from the largest next-generation network operators to small,
6 entrepreneurial companies. I have previously presented testimony in
7 Tennessee.

8
9 **Q: WHAT ARE YOUR RESPONSIBILITIES AT ITC^DELTACOM?**

10 A: I am responsible for ITC^DeltaCom's relationship with state and federal
11 government entities including state public utility commissions, state legislatures,
12 the FCC and the US Congress. I am also responsible for facilitating the working
13 relationship of ITC^DeltaCom with other telecommunications companies
14 including incumbent local exchange companies, competitive local exchange
15 companies and other providers.

16
17 **Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

18 A: The purpose of my testimony is to rebut the testimony of BellSouth witnesses
19 Pam Tipton and Kathy Blake as well as recommend alternative language to
20 BellSouth's proposed language for implementing the TRO/TRRO. I will also
21 discuss the status of DeltaCom's TRO/TRRO amendment negotiations with
22 BellSouth and describe the process that allows DeltaCom to participate in the
23 generic proceedings as well as two-party dispute resolution proceedings.

1 **Q. WHAT IS THE PURPOSE OF THIS PROCEEDING AND WHAT OTHER**
2 **ACTION WILL BE REQUIRED TO COMPLETE THE CHANGE OF LAW**
3 **PROCESS RESULTING IN TENNESSEE REGULATORY AUTHORITY (TRA)**
4 **APPROVED INTERCONNECTION AGREEMENT AMENDMENTS THAT ARE**
5 **COMPLIANT WITH THE TRO/TRRO?**

6 A. The purpose of the generic proceeding is to hear generic testimony for those
7 issues identified on the issues list jointly filed by CompSouth and BellSouth. It
8 was agreed that this process would include the approval by the Authority of
9 policies resulting in compliant language to be used in TRO/TRRO amendments
10 that would subsequently be filed by BellSouth and each CLEC in accordance
11 with the provisions in their respective interconnection agreements. Those
12 amendments could also include other negotiated language and/or language
13 arrived at through separate Authority dispute resolution.

14
15 **Q. DO YOU THINK SOME OF THE DELTACOM ISSUES ARE APPROPRIATE**
16 **FOR A BILATERAL PROCEEDING?**

17 A. Yes. Deltacom has a clear contractual right to seek bilateral resolution of issues
18 arising from changes in law. In addition to the need for strong policy calling for
19 the parties to get resolution to many of these issues before the March 11th
20 deadline, the Authority approved interconnection agreement very clearly
21 contemplates a bilateral process. Sections 16.4 and 11 of the agreement provide
22 that parties are to negotiate for ninety-days after which either party may seek
23 alternative dispute resolution from the Authority. This two-phase dispute

1 resolution process recognizes the importance of bilateral resolution of disputed
2 issues and promotes innovation.

3
4 **Q. HAS DELTACOM SOUGHT THE MOST EFFICIENT PROCESS TO RESOLVE**
5 **ITS ISSUES WITH BELL SOUTH?**

6
7 A. Yes. During the early stage of discussions with BellSouth, DeltaCom
8 recommended that the parties agree to a framework for the negotiations that
9 would accommodate deferral of certain issues to the generic proceedings, and
10 separate dispute resolution of issues that were unique to the DeltaCom/BellSouth
11 interconnection agreement. Moreover, DeltaCom proposed that the parties could
12 resolve any issue through negotiations without dispute resolution proceedings
13 conducted by the Authority. To the extent we resolved issues that were to be
14 addressed in the anticipated cases we agreed to use the settlement language
15 rather than the language that might be determined in the generic docket. At no
16 time during our discussions did the BellSouth negotiators object to the proposed
17 framework or offer any alternative process.

18
19 **Q. IS BELL SOUTH'S TESTIMONY CONSISTENT WITH THIS PROCESS?**

20 A. No. Ms. Tipton should not have attached the BellSouth version of a TRO/TRRO
21 Attachment 2 that has not been agreed to by DeltaCom and BellSouth and
22 includes language that is not the subject of this proceeding. Should the Authority
23 approve this document in its entirety for use by all CLECs it would deprive

1 DeltaCom and other CLEC's of their contractual right to two-party negotiations
2 and dispute resolution. Moreover, in the case of DeltaCom it would remove
3 language from the existing Attachment 2, that was approved by the Authority in
4 our pending negotiated/arbitrated interconnection agreement even though that
5 language was not effected by the requirements of the TRO/TRRO. As one of
6 BellSouth's largest and oldest customers we have a long history of negotiating
7 amendments that meet our individual business needs and are compliant with
8 current law. In the present circumstance, we are seeking, as efficiently as
9 possible, to resolve both the disputed TRO/TRRO issues identified for the
10 generic and the remaining TRO/TRRO issues that are specific to the
11 DeltaCom/BellSouth's interconnection agreement. There should be no change to
12 the language in Attachment 2 that was previously arbitrated and approved by the
13 Authority that was not impacted by the TRO/TRRO change of law.

14
15 **Q: PLEASE PROVIDE SOME HISTORY LEADING TO THIS DOCKET AND THE**
16 **DISPUTE RESOLUTION PROCEEDING SOUGHT IN ITC^DELTACOM'S**
17 **PETITION?**

18 **A:** The Tennessee interconnection agreement contemplates a bilateral change of
19 law process and BellSouth is currently engaged with Deltacom in that process for
20 the TRO/TRRO requirements. In December of 2004, DeltaCom approached
21 BellSouth with a request to begin negotiations so that we could reach agreement
22 as soon as possible on a TRO/TRRO amendment. Our sense of urgency was
23 driven by the need to begin the conversion of facilities consistent with the

1 provisions of the TRO/TRRO. BellSouth responded that it was not practical to
2 begin negotiations until after the FCC released its written order. On or about
3 March 14, 2005, BellSouth sent a change of law request to begin negotiations
4 thereby triggering the change of law process provided for in the
5 DeltaCom/BellSouth interconnection agreement. BellSouth sent its template
6 language to DeltaCom at approximately the same time. DeltaCom responded
7 with its own version of template language using a combination of the previously
8 negotiated/arbitrated DeltaCom/BellSouth interconnection agreement Attachment
9 2 with appropriate changes related to the TRO/TRRO requirements. Over the
10 course of the 90-day period, the parties exchanged draft versions of Attachment
11 2 and participated in numerous negotiation sessions. While DeltaCom
12 compromised and moved to certain BellSouth proposed language, BellSouth as
13 of the date of this testimony has not agreed to any substantive language
14 proposed by DeltaCom related to the TRO/TRRO. Because of the pending
15 March 11, 2006 deadline, DeltaCom sought early in the negotiations to reach an
16 ***“interim transitional amendment”*** so that it could begin moving high capacity
17 loops and transport that are in non-impaired areas. BellSouth rejected
18 DeltaCom's request saying it was unwilling to effect any TRRO changes until the
19 completion of the entire Change of Law process. At the end of the 90-day
20 negotiation period, DeltaCom filed its Petition for Mediation and Dispute
21 Resolution to resolve the unsuccessful negotiations that had occurred with
22 BellSouth. Based on experience in other negotiations, DeltaCom believes that

1 the BellSouth negotiators were not authorized to agree to compromise language
2 that was repeatedly offered in good faith by DeltaCom.

3
4 From the beginning, DeltaCom has understood the urgency of transitioning our
5 network to new service arrangements that are necessitated by the TRO/TRRO.
6 DeltaCom believes that the FCC and this Authority expect both DeltaCom and
7 BellSouth to undertake whatever processes are required to insure uninterrupted
8 service to existing customers while protecting the interest of both companies.
9 Faced with the upcoming March 11, 2006 deadline and understanding that the
10 change of law process including the generic cases will likely not be completed by
11 that date, DeltaCom sought dispute resolution in the hope that an interim
12 compromise could be reached pending the final outcome of the generic cases.
13 Regrettably, BellSouth has stated that it is unwilling to participate in a two-party
14 mediation or dispute resolution process with DeltaCom. BellSouth has taken the
15 non-sensical position that they will continue negotiations with DeltaCom but will
16 not participate in a non-binding mediation process. It is difficult to understand
17 why a company engaged in good faith negotiations would refuse to even attempt
18 mediation.

19
20 **Q: DOES YOUR TESTIMONY ADDRESS ITC^DELTACOM'S POSITION ON ALL**
21 **UNRESOLVED ISSUES?**

22 **A:** No. I address our position on certain issues.

1 **Steven Brownworth** will discuss:

- 2 • migration issues related to high capacity loop and transport and IDLC
3 loops.

4
5 **Mary Conquest** will discuss:

- 6 • bulk migration issues and trouble resolution.

7
8 I will address the following issues in my testimony:

- 9
10 • Tariffed Access Services to Collocation Sites
11 • Transitional Period for UNE-P (Merger/Acquisition)
12 • Non-TRO/TRRO Generic Issues and Bilateral Negotiation Issues

13
14
15 **Q: HOW DOES YOUR TESTIMONY ON THESE ISSUES RELATE TO THE**
16 **PETITION FOR ALTERNATIVE DISPUTE RESOLUTION?**

17 **A:** Our Petition represents the best way to expeditiously resolve the issues between
18 BellSouth and DeltaCom. In the past, mediation with state regulatory authorities
19 using their “good offices” to facilitate settlement has been effective. However,
20 BellSouth seems unwilling to even meet with DeltaCom in the presence of state
21 regulators. For that reason, I present these issues in this formal process.
22 However, DeltaCom has a contractual right to pursue the two-party dispute
23 resolution and we will do so. The two-party process is particularly important for

1 issues where ITC^DeltaCom has unique requirements or a distinct proposed
2 solution.

3
4 **Q. ARE SOME OF THE ISSUES IN DISPUTE UNRELATED TO CHANGES IN**
5 **LAW?**

6
7 Yes. ITC^DeltaCom Petition Issues 20 and 27: For these issues BellSouth
8 claims that these changes are not related to change of law. DeltaCom agrees;
9 however, BellSouth not DeltaCom struck language related to these issues during
10 the negotiations. To the extent BellSouth no longer seeks to strike or make
11 changes to already approved language in the interconnection agreement, these
12 issues are mute.

13
14 **Q: WHAT IS DELTACOM'S PROPOSED LANGUAGE TO INCORPORATE**
15 **TRO/TRRO ORDERS FOR ATTACHMENT 2 ?**

16 A: Attached as Exhibit JW-1 is our proposed language for specific issues related to
17 Attachment 2 and raised in our negotiations.

18
19 **Q: WHAT ARE THE OPERATIONAL AND BUSINESS IMPERATIVES THAT**
20 **SUPPORT YOUR POSITION?**

21 A: Our primary objective is to obtain a cost effective and efficient means of
22 transitioning existing Tennessee consumers (both government and private
23 industry) without service interruption. Mr. Brownworth will discuss in more detail

1 the changes that are necessary and the critical elements needed to make this
2 transition. The issues addressed by Mr. Brownworth are the most critical to the
3 migration of high capacity loops/transport.

4
5
6 **Q: SHOULD BELLSOUTH BE REQUIRED TO DELIVER ANY TARIFFED**
7 **SERVICES REQUESTED BY ITC^DELTACOM TO A COLLOCATION SITE?**

8 **A:** Yes. Any tariffed access service offered by BellSouth and ordered by
9 ITC^DeltaCom should be available for delivery by BellSouth to ITC^DeltaCom's
10 collocation sites or a third party collo site. Language allowing this arrangement
11 has been included in ITC^DeltaCom's past two interconnection agreements with
12 BellSouth and approved by the Authority. BellSouth agreed to this language prior
13 to the arbitration filing in February 2003. For that reason, ITC^DeltaCom did not
14 raise this as an issue in the most recent arbitration case. We have been unable
15 to determine why BellSouth seeks to strike this previously approved language.

16
17 **Q: PLEASE STATE WHETHER EMBEDDED BASE LIMITATIONS PROHIBIT**
18 **CLECS FROM ADDING A LINE OR MERGING WITH ANOTHER COMPANY**
19 **WHEN THE END USER CUSTOMER WAS RECEIVING SERVICE FROM A**
20 **CLEC VIA UNE-P PRIOR TO MARCH 11, 2005? WHAT TERMS AND**
21 **CONDITIONS SHOULD APPLY DURING AND AFTER THE TRANSITION**
22 **PERIOD?**

1 A: Based on BellSouth's apparent interpretation of the TRRO, DeltaCom cannot add
2 a line to an existing customer nor could it merge another CLEC into its customer
3 base without losing the transitional pricing for the embedded base customers.
4 DeltaCom has proposed language at Exhibit JW-1 regarding the terms and
5 conditions of the transition period as well as the process for transferring
6 embedded UNE-P customers.

7 **Q: ARE THERE ANY ISSUES WHERE AGREEMENT MAY BE REACHED?**

8 A: Yes. Although BellSouth has resisted our request to mediate or otherwise let the
9 Authority facilitate settlement, they have agreed to continue bilateral negotiations
10 so there may be areas where the parties could reach agreement. Based on
11 BellSouth's Motion to Dismiss it appears that BellSouth is no longer seeking to
12 change the language on hot cut intervals that was previously settled between the
13 parties (Issue 20). Furthermore based on BellSouth's Motion to Dismiss it
14 appears that BellSouth does not believe that Issue 27 (conversion of resold
15 services to other services) is subject to change of law. In both cases the parties
16 currently have language in Attachment 2 that BellSouth during negotiations
17 sought to alter or strike. If BellSouth is no longer seeking to strike or alter this
18 language, then the parties have no dispute on these issues. The current
19 language remains.

20
21 **Q: SHOULD BELL SOUTH BE REQUIRED TO HONOR THE LANGUAGE**
22 **AGREED UPON IN SETTLEMENT OF ITS ARBITRATION RELATING TO HOT**
23 **CUTS?**

1 A: In an abundance of caution, ITC^DeltaCom includes this item because BellSouth
2 has said that it seeks to revise language agreed upon in settlement of Arbitration.
3 Language at Exhibit JW –1 should be ordered.

4
5 **Q: SHOULD ITC^DELTACOM BE PERMITTED TO CONVERT RESOLD**
6 **SERVICES TO OTHER TYPES OF SERVICES?**

7 A: Yes. This language has been in the previously approved ITC^DeltaCom
8 interconnection agreements. BellSouth did not raise any issues with this
9 language prior to the filing of the Arbitration petition in February 2003.
10 ITC^DeltaCom should be permitted to convert resold services to UNEs or
11 combinations of UNEs. Language covering the issue can be found at Exhibit
12 JW-1.

13
14 **Q: ARE THERE ANY OTHER CHANGE OF LAW ISSUES NOT RELATED TO**
15 **THE TRO/TRRO THAT HAVE BEEN RAISED?**

16 A: Yes. The Pick and Choose Order and the Core ISP Remand Order. However, I
17 will focus on the Core ISP Remand decision. The Core ISP remand order states
18 that the growth caps and new markets rule no longer applies. BellSouth takes the
19 position that the template language in the interconnection agreement should not
20 incorporate this FCC order and points to the fact that BellSouth has reached
21 individual settlements with certain carriers. DeltaCom submits that each such
22 specific negotiation should be between that carrier and BellSouth but that on a
23 generic basis and certainly in a template agreement, the language offered in the

1 template should be compliant with the most recent orders – including those
2 orders that BellSouth disfavors. For the template agreement, DeltaCom
3 recommends the language noted in Exhibit JW-1.

4 **Q: DOES THIS CONCLUDE YOUR TESTIMONY?**

5 **A: Yes.**